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Fundamental Rights under the Indian Constitution: An Overview

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ABSTRACT

Fundamental Rights are basic rights guaranteed by the Constitution of India to protect individual liberty, equality, dignity, and freedom. This paper highlights the right to freedom of speech and expression and right to assemble peaceably and without arms. This paper ensures essential liberties to all Indian citizens for their development, such as right to equality like equality before the law, prohibition of discrimination, equality of opportunity in employment, and the abolition of untouchability. All citizens are equal before the law and shall be equally protected by the laws of the country. At first our constitution has the right to equality. This means everyone is treated the same before the law.

Keywords: Fundamental, rights, liberty, equality, human, dignity, freedom and protection

INTRODUCTION

The Fundamental Rights enshrined in the Constitution are the basic rights guaranteed to all citizens. The Fundamental Rights in India enshrined in the Part III (Article 12-32) of the Constitution of India guarantee civil liberties such that all Indians can lead their lives in peace and harmony as citizens of India. These rights are known as 'fundamental' as they are most essential for all-round development i.e., material, intellectual, moral and spiritual and protected by fundamental law of the land i.e. constitution. Fundamental rights are a group of rights that have been recognized by a high degree of protection from encroachment. These rights are specifically identified in a constitution, or have been found under due process of law.

Certain rights are considered as fundamental or basic as they are essentially useful for the realization of the maximal well being of the citizen. Every human being is entitled to enjoy these rights if he/she seeks to maintain human dignity. Fundamental rights are the basic human rights which are considered necessary for the social development of an individual. They are included in our constitution so that every citizen of the country can enjoy them and no one is able to encroach upon them. In a democratic country, these rights help to grow the balanced and responsible citizens. According to them, "democracy is, in essence, a government by opinion and therefore, the means of formulating public opinion should be secured to the people of a democratic nation. For this purpose, the constitution guaranteed to all the citizens of India the freedom of speech and expression and various other freedoms in the form of the fundamental rights"(Laski, Harold Joseph 1930)

Our constitution guarantees that all citizens will be equally protected by the laws of the country and the state cannot discriminate against a citizen on the basis of race, caste, sex, religion or place of birth. These rights have also been aimed at marginalizing the inequalities of pre-independence social practices. They have proved to be a landmark in abolishing the social evils such as untouchability. They are the source of protection of the cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own educational institutions. "In 1931, the Indian National Congress (the largest Indian political party of the time) adopted resolutions committing itself to the defence of fundamental civil rights, as well as socio-economic rights such as the minimum wage and the abolition of untouchability and serfdom" (Gandhi, Rajmohan. Patel*: A Life.* 206))

The constitution guarantees six fundamental rights and these form very important part of the constitution. These rights are- (i) Right to Equality, (ii) Right to Freedom, (iii) Right against Exploitation, (iv) Right to Freedom of Religion, (v) Cultural and Educational Right and (vi) Right to Constitutional Remedies.

The Right to Freedom is a cluster of several rights, including freedom of speech and expression, freedom to assemble peacefully and without arms, throughout the country, freedom to reside and settle in any part of the country and freedom to practice any profession However, the constitution imposes restrictions on these rights such as the government can resist these freedoms in the interest of the independence, sovereignty and integrity of India. "The Right to Freedom of Religion, covered in Articles 25–28, provides religious freedom to all citizens and ensures a secular state in India. According to the Constitution, there is no official State religion, and the State is required to treat all religions equally, impartially and neutrally" (Basu ,1993, 111) The Right to Freedom of Religion provides religious freedom to all the citizens of India, according to which all the citizens are free to profess, practice and propagate any religion. Every religious denomination has the right to maintain its institutions for religious purposes. "Article 22 provides specific rights to arrested and detained persons, in particular the rights to be informed of the grounds of arrest, consult a lawyer of one's own choice, be produced before a magistrate within 24 hours of the arrest, and the freedom not to be detained beyond that period without an order of the magistrate" (Basu 2003, 282–284)

Our constitution forbids employment of children below the age of 14years in dangerous jobs like mines and factories. Instead children should be allowed to get education and lead a happy childhood. Thus, the Right against Exploitation is a legal weapon to ensure safety of children. If this right is violated, one can go to the court of law to get justice. The Cultural and Educational Rights provides every community the rights to protect language, script and culture and allow all the minorities, whether based on language, or religion to establish and administer educational institutions of their choice. "The Supreme Court has been empowered to issue writs, namely habeas corpus, mandamus, prohibition, certiorari and quo warranto, for the enforcement of the Fundamental Rights, while the High Courts have been empowered under Article 226 – which is not a Fundamental Right in itself – to issue these prerogative writs even in cases not involving the violation of Fundamental Rights" (Basu 1993, 12)

The Right to Constitutional Remedies is a very special right which empowers the citizens to go to the court in case of denial of any of these fundamental rights. The court of law stands as a guard against the violation of these rights by the government. In case the government uses power against a citizen unjustly or if he/she is imprisoned or punished without reason, or unlawfully, the Right to Constitutional Remedies empowers the aggrieved person to go to court and get justice against the government action. "Rights literally mean those freedoms which are essential for personal good as well as the good of the community. The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the Fundamental Law of the Land and are enforceable in a court of law. However, this does not mean that they are absolute or that they are immune from Constitutional amendment" (Tayal, B. B.; Jacob, A. 25)

The fundamental Rights embodied in our constitution bear certain characteristics. They are the most elaborate in world and form an integral part of the constitution. All rights are justifiable. These rights bear a policy of suspension as restriction can be imposed at any time in the larger interests of the community. "The rights guaranteed under the Constitution of India are fundamental as they have been incorporated into the Fundamental Law of the Land and are enforceable in a court of law. However, this does not mean that they are absolute or immune from Constitutional amendment" (Tayal & Jacob 2005, p. A-23) The citizens alone enjoy these rights--suggests that our constitution draws a distinction between citizens and aliens in the matter of enjoyment of fundamental rights. These Rights are amendable but they cannot be abrogated because that will violate the basic structure of the constitution.

The fundamental Rights aim to ensure the social well being of the citizens of the country. But the question arises that how many people indeed bring these rights out of their 'once upon read textbooks' and actually practice them. Moreover, about more than half of the rural population is alien to these rights. The significance of these rights is diminished by the fact that the exercising and implementation of these rights is negligible. The right to Property was generally brought out in picture but today it has already become a legal right. Moreover, the Right Against Exploitation has usually faced a setback as the research date elucidates that a large number of children are engulfed in dangerous jobs barring them from leading a happy childhood.

The indispensability of the rights lies in its encroachment in the true sense. The society must realize the power behind these rights, it unwittingly upholds. The people must exercise these rights when needed and must raise their voice against their exploitation and fight back. Only then, the fundamental rights shall uphold a visible and pivotal role in society.

Practicing Fundamental Duties:

Enforced with the Forty Second Constitution Amendment Act, 1976, ten Fundamental Duties in Article 51 (A) were incorporated in the constitution of India. The Eighty-Six Constitution Amendment Act, 2002 has adder one more Fundamental Duty in Article 51(A) of the constitution of India. As a result, there are now 11 Fundamental Duties of the citizen of India. Though Fundamental rights are available to non-citizens as country. It is expected that a citizen of India,

while enjoying the fundamental rights, should also perform these duties in the interest of the country. Although there is no provision in the constitution for direct enforcement of any of these duties, yet the courts are guided by these duties while interpreting various laws. These duties have possessed sanctity as these are included in the Directive Principles of State policy.

The eleven Fundamental Duties of every citizen of India are listed below:

(a) To abide by the constitution and respect the National Flag and the National Anthem;
(b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
(c) To uphold and protect the sovereignty, unity and integrity of India;
(d) To defend the country and render national service when called upon to do so;
(e) To promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
(f) To value and preserve the rich heritage of our composite culture;
(g) To protect and improve the natural environment including forests,
(h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
(i) To safeguard public property and to abjure violence;
(j) To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels endeavour and achievement.
(k) To provide opportunities for education by the parent or the guardian, to his child, or a ward between the ages of 6-14 years as the case may be.

There are some destined affiliations for the Fundamental Rights which must be observed and fulfilled by every citizen of the country. One should try to do the public good and control one's conduct on the belief of the good of his country. One should exercise his rights with proper judgment and obey the law of road and the like. One should try to build himself to put through his best service for the country. One should be socially active and amicable. As a citizen, one should know his responsibility to discharge his duties as and when needed.

But, as a matter of fact, people often claim their Fundamental Rights but never their duties, there can be no rights without duties, in fact, the rights and duties are intertwined with each other or they can be regarded as the two sides of the same coin. The flow of rights can be regulated if the duties are well performed. Even Gandhiji while emphasizing the economic and social responsibilities of all citizens, said:"The true source of right is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed, we run after right, they will escape us like will-o-the-wisp, the more we pursue them, the farther they will fly."(Austin, Granville 1999)

It is a matter of regret that most of the Indian citizens are negligent towards their duties to India. But, the curricular analysis to the educational processes in Fundamental Duties can become a source of reviving. Hence, it is necessary to review education in Fundamental Duties from the point of view of pedagogical processes. Reorientation to school curriculum should be done such as seminars, debates, competitions on different aspects related to Fundamental Duties to be made a regular feature of the co-curricular activities of schools. Another effective way to institutionalize the concept of Fundamental Duties in the teacher education is by incorporating it in the elementary and secondary pre-service teacher education curriculum. It is important to note that while dwelling in the multifaceted learning environment where learning accrues from a large number of sources including home, school, community, print media, electronic mass media, knowledge networks and internet, they uphold a great potential to aware the masses. Moreover, incorporation of Fundamental Duties in Higher and professional Education should be brought out as another prospect.

CONCLUSION

Fundamental Rights are defined as inalienable & basic human rights where every Indian citizen has the right to enjoy for a proper and harmonious development. The fulfillment of the fundamental or the basic enlisted duties in the Constitution will not only entitle the people as the actual inheritors of the Fundamental Rights but also lead to the social development at a faster pace with a minimal or roadblocks. Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory. Fundamental Rights are the basic human freedoms that every individual in India enjoys, ensuring dignity, equality, and liberty.

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